

ROBERT H. DRAKE, JR.
Appl. No. 10/072,916
September 16, 2003

REMARKS/ARGUMENTS

The rejection of claims 1-16 based on 35 U.S.C. 112, second paragraph, is respectfully traversed.

The Examiner states that the term "exclusive" does not limit the metes and bounds of the claim and asks how is the non-woven layer "exclusive" when it is adhered to the carpeting. With respect, the Examiner misinterprets the claim. It is the carpet which is exclusive of the claimed non-woven material layer. It is not a non-woven layer which is exclusive of the carpet. The term "carpeting" in the final paragraph of claim 1 refers to commercial carpeting. Such commercial carpeting may include a tufted pile with a primary backing or a fusion-bonded pile with a primary backing or any other type of carpeting. Additional layers may also be provided in the "carpeting," including a "non-woven material" but not the same "non-woven material" set forth in the earlier part of the claim. The "carpeting" set forth in the final paragraph of claim 1 is just such commercial carpeting as referenced in the beginning portions of the specification.

The meaning of the last clause of claim 1 is quite clear when read in context of the present invention. The present system as claimed provides a releasable installation, for example, of broadloom carpeting to cover a flooring surface, for example, vinyl asbestos tiles such that the carpeting can be applied to the flooring surface in a removable fashion. To accomplish that, a first pressure sensitive adhesive (PSA) is adhered to the first flooring surface and the layer of non-woven material is applied to the PSA, providing a surface substantially impervious to moisture. A second

ROBERT H. DRAKE, JR.
Appl. No. 10/072,916
September 16, 2003

carpet installation adhesive is applied to the layer of non-woven material on a side thereof opposite the PSA. The "carpeting" is adhesively secured to this second adhesive. The recited "carpeting" in the final paragraph of claim 1 refers to a commercial carpeting or a complete carpeting which does not include the layer of non-woven material previously recited in claim 1. The "carpeting" of claim 1 may include a layer of non-woven material but may not include the layer of non-woven material specifically recited in the third full paragraph following the preamble of claim 1. Thus, the term "exclusive" does limit the claim as defining "carpeting" which does not include the layer of non-woven material specifically recited in the claim and which non-woven material has the PSA and second adhesive applied to opposite sides thereof. The system of the present invention thus includes the PSA, the non-woven layer, permanent adhesive and carpeting.

A main component of the claimed flooring system is the non-woven layer, which is not part of the claimed carpeting, and which can roughly be described as a paper-like material. This latter layer is adhered to the existing floor surface with the PSA and the carpeting is then glued directly over the non-woven layer using standard permanent carpet adhesive. When the time comes for removal of the carpeting, the adhered non-woven layer and the "carpeting" permanently secured to the non-woven layer are readily removed from the floor surface as a result of the releasable nature of the PSA between the non-woven layer and the floor surface. Thus, properly interpreted, the claimed "carpeting" is carpeting in its fullest meaning, i.e., manufactured or finished

ROBERT H. DRAKE, JR.
Appl. No. 10/072,916
September 16, 2003

carpeting ready for application to a substrate. It is not a layer of "carpeting" or a part of carpeting. Thus, the answer to the Examiner's question regarding the term "exclusive" is simply that the non-woven layer claimed is not part of the claimed "carpeting," the latter being full and complete in the commercial or finished sense of a "carpeting" readily applicable to a substrate. The claimed non-woven layer is a separate layer utilized only in an easy installation system of this type where the "carpeting" must be easily removed from the existing sub-floor. The non-woven layer is a separate layer. While adhered to the backing of the carpet using a permanent adhesive, it is not fused to the backing as part of the manufacturing process of a commercial carpet. The term "exclusive" as used in the claim and in the context of the present invention therefore limits the claimed "carpeting" to exclude the non-woven layer of material previously recited in claim 1.

The rejection of the claims as unpatentable over Drake in view of Hamilton or that combination of references in view of Helbling is respectfully traversed.

The Examiner references the first Office Action in which Hamilton is stated to disclose a carpet backing including fiberglass non-woven fabric and a pressure sensitive adhesive adhered to the non-woven layer so that the carpet tile can be applied to a substrate. Hamilton discloses cut yarn material in rope form having ends adhesively secured to a fiberglass mesh 36 and a non-woven glass fiber tissue sheet material 34 forming the primary backing. The carpet material may have a further backing or not. The PSA may be applied to the carpet tile, i.e., the back side of the

ROBERT H. DRAKE, JR.
Appl. No. 10/072,916
September 16, 2003

primary backing comprised of the fiberglass mesh and non-woven glass fiber tissue sheet material or the PSA may be applied to the further backing. Thus, Hamilton provides a finished product, i.e., a carpeting comprised of a primary backing having fiberglass mesh and non-woven glass fiber tissue to which is adhered by permanent adhesive the yarn material in rope form. The primary backing 34, 36 of Hamilton provides stability to the finished carpeting and holds the yarn bundles in place. The Hamilton carpet may then be glued directly to the floor surface using the PSA or an additional secondary backing material may be applied during the manufacturing process of the Hamilton reference with the PSA being applied to the secondary backing to hold the laminated carpeting to the floor surface. This is inherently different from the present flooring system which utilizes a finished carpet, i.e., the claimed "carpeting" of claim 1, and then adds a totally separate and independent non-woven layer during the installation process to facilitate the removal of the finished carpet when that carpet must be replaced. The claim clearly excludes from the claimed "carpeting," the layer of non-woven material. In contrast, Hamilton fuses the rope yarns to the primary backing 34, 36 to form a finished carpeting which is necessary to hold the yarn bundles in place. Hamilton does not have a non-woven layer exclusive of the Hamilton carpet which requires a primary backing 34, 36 of non-woven material.

The '387 patent to Drake discloses a permanent adhesive securing one carpet layer in overlying relation to another carpet layer. The Examiner considers it to have been obvious to insert the non-woven primary backing 34, 36/PSA layer of Hamilton

ROBERT H. DRAKE, JR.
Appl. No. 10/072,916
September 16, 2003

between the adhesive and flooring layers of Drake '387. In doing so, however, the Examiner is selecting out of Hamilton a non-woven primary backing which forms a necessary and integral part of the carpeting of Hamilton. There is manifestly no suggestion for this selection of materials for insertion in the Drake '387 carpet upon carpet system. The Examiner predicates the conclusion of obviousness in part on the suggestion that it increases the cushioning effect to users. However, the desire to provide increased cushioning leads persons skilled in the art to utilize carpet pads rather than non-woven layers having moisture impervious properties and which non-woven layers do not materially improve any desired cushioning.

More particularly with respect to the Hamilton disclosure, the primary backing comprised of the layers 34, 36 in Hamilton form the carpeting with the rope yarns. That primary backing of Hamilton is necessary as a component of the carpet for all finished applications and is necessarily supplied or formed as an integral part of the carpet during the manufacturing process. The primary backing in Hamilton holds the yarn bundles in place in the carpeting. Those layers 34, 36 constitute the primary backing of the carpet itself. In contrast, the claimed non-woven layer is not part of the "carpeting" which is complete unto itself and is part of a finished carpet. In short, the carpeting in the present application is a finished product without the claimed additional non-woven layer whereas in Hamilton, the primary backing 34, 36 necessarily forms part of the finished product, i.e., forms the finished product only in conjunction with the rope yarns. The claimed non-woven layer does not secure the yarns in the carpeting as in Hamilton

ROBERT H. DRAKE, JR.
Appl. No. 10/072,916
September 16, 2003

or provide any function necessary to complete the "carpeting" as a finished stand-alone product as in Hamilton. The claimed "non-woven" layer is an adjunct to a complete stand-alone "carpeting" in claim 1. Consequently, there is no suggestion, motivation or teaching to remove or dissect from the integrally formed carpeting of Hamilton its primary backing and apply that together with PSA intermediate the two carpets shown in the Drake '387 patent. Applying releasable adhesive between two carpeting layers simply would not be suggested to individuals of skill in the art attempting to provide new wall-to-wall carpeting directly over worn broadloom as in Drake and have that new carpeting permanently adhered to the underlying worn broadloom.

To answer the Examiner's contentions more specifically, the Examiner in the middle of page 3 of the Final Rejection, states that the claimed non-woven layer and carpet layer are integrally attached via an adhesive layer. The term "carpeting" in claim 1, however, means a complete or finished carpeting. Hamilton does not teach a non-woven layer and "carpeting" to be attached via a wet laid adhesive. Hamilton may teach a non-woven layer and rope yarns to be attached to a substrate via a wet laid adhesive, but this is entirely different than a non-woven layer attached to a "carpeting" as that term is used in the context of the present claims and specification. The term "exclusive" clearly sets forth this distinction.

The mere fact that the non-woven layer is permanently adhered to the claimed "carpeting" does not render that combination the same as a non-woven layer as in Hamilton permanently adhesively secured to rope yarns. The term "carpeting" as used

ROBERT H. DRAKE, JR.
Appl. No. 10/072,916
September 16, 2003

herein has meaning, and it does not mean simply a portion or a part of a "carpet," but rather, means a finished carpeting *per se* as a complete manufacture.

The Examiner misconstrues the statement at column 7, lines 48-49 of Hamilton (see page 4, line 3 of the Office Action). At column 7, lines 48-49, Hamilton is stating that the carpet formed of the primary backing layers 34, 36, 42 and 32 illustrated in Figure 2 may be adhesively secured to an underlying surface or may be provided over a second independent backing such as a pad. Thus, the Examiner is in fact dissecting the non-woven layer, i.e., the primary backing 34, 36 from the Hamilton carpet *per se*.

In the first full paragraph on page 4, the Examiner states that Hamilton "teaches a carpet adhered to a non-woven via a wet laid adhesive. This is simply not so. Hamilton teaches yarns adhesively secured to a non-woven primary backing 34, 36. Neither the rope yarns, nor the adhesive 42, nor the primary backing 34, 36 form a "carpet." They form parts of a carpet but do not form "carpeting" as claimed. Consequently, Hamilton does not teach a "carpet" adhered to a non-woven via a wet laid adhesive.

The crux of claim 1 is that applicant is claiming carpeting (in the full meaning of the term and not simply just a layer of carpeting) in combination with a separate element, i.e., a non-woven layer with certain types of adhesive on opposite sides of the non-woven layer to form a flooring system. While applicant readily admits that the constituent elements set forth in claim 1 are known elements *per se*, there is absolutely no suggestion or teaching for combining those elements or ordering them in the manner

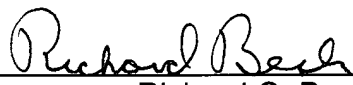
ROBERT H. DRAKE, JR.
Appl. No. 10/072,916
September 16, 2003

claimed as a result of a review of the Drake and Hamilton patents. The non-woven primary backing 34, 36 of Hamilton is not separate and apart from the "carpet" of Hamilton but in conjunction with the rope yarns forms the finished carpet. There is therefore no disclosure of "carpeting" in Hamilton which is adhered to a non-woven layer as claimed.

Accordingly, reconsideration and allowance of the claims presently pending in the application is respectfully requested.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 
Richard G. Besh
Reg. No. 22,770

RGB:ljb;alm
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100